

916
No. 2463

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE SOUTHERN PACIFIC COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Arizona.

Filed

AUG 27 1914

F. D. Monckton,
Clerk.

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1777-1778

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Complaint.]

*In the District Court of the United States for the
District of Arizona, ——— Division.*

No. 2098.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Now comes the United States of America, by Joseph E. Morrison, United States Attorney for the District of Arizona, and brings this action on behalf of the United States against the Southern Pacific Company, a corporation organized and doing business under the laws of the State of Kentucky, and having an office and place of business at Benson, in the State of Arizona; this action being brought upon suggestion of the Attorney General of the *United at* the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

FOR A FIRST CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at

Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on December 21, 1912, upon its line of railroad at and between [1*] the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit: Billy F. Eaker, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 o'clock A. M., on said date, to the hour of 10:29 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

FOR A SECOND CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes

*Page number appearing at foot of page of original certified Record.

at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit: Frank H. Kempf, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 [2] o'clock A. M., on said date, to the hour of 10:29 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

FOR A THIRD CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the

hour of 5:30 o'clock A. M., on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Benson, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit: B. T. Sullivan, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 o'clock A. M., on said date, to the hour of 12:40 o'clock A. M., on December 22, 1912.

Plaintiff further alleges that said employee, while required [3] and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

FOR A FOURTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on December 21, 1912,

upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Benson, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: W. E. Brown, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 o'clock A. M., on said date, to the hour of 12:40 o'clock A. M., on December 22, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of [4] interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

FOR A FIFTH CAUSE OF ACTION,

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on December 21, 1912, upon its line of railroad at and between the stations

of Lordsburg, in the State of New Mexico, and Benson, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: H. F. Peacock, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 o'clock A. M., on said date, to the hour of 12:40 o'clock A. M., on December 22, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[5]

FOR A SIXTH CAUSE OF ACTION,
plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on December 21, 1912, upon its line of railroad at and between the stations

of Lordsburg, in the State of New Mexico, and Benson, in the State of Arizona, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: C. G. Harrison, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:30 o'clock A. M., on said date, to the hour of 12:40 o'clock A. M., on December 22, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[6]

FOR A SEVENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit: C. J. Maben, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[7]

FOR AN EIGHTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit: J. E. Anderson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[8]

FOR A NINTH CAUSE OF ACTION,
plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit: C. A. Owens, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[9]

FOR A TENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: J. F. Weathered, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[10]

FOR AN ELEVENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: G. Davis, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[11]

FOR A TWELFTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:20 o'clock A. M., on December 22, 1912, upon its line of railroad at and between the stations

of Tucson, in the State of Arizona, and Bowie, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit: E. Leinen, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit: from said hour of 5:20 o'clock A. M., on said date, to the hour of 10:50 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2794, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[12]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of six thousand dollars and its costs herein expended.

(Signed) JOSEPH E. MORRISON,
United States Attorney.

[Endorsements]: No. 5—Tucson. (No. 100.) District Court of United States, District of Arizona. The United States of America vs. Southern Pacific Company. Complaint—16 Hours' Service Law. Filed Aug. 14, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. [13]

*In the United States District Court, for the District
of Arizona.*

No. 100.

UNITED STATES OF AMERICA

vs.

SOUTHERN PACIFIC COMPANY,

Summons.

Action Brought in the United States District Court
for the District of Arizona.

The President of the United States of America,
Greeting: To Southern Pacific Company, a
Corporation.

YOU ARE HEREBY SUMMONED and required to appear in an action brought against you by the above-named plaintiff in the United States District Court for the District of Arizona, and answer the complaint therein filed with the Clerk of this said Court, at Phoenix, in said District within twenty days after service upon you of this Summons, if served in this said District, or in all other cases within thirty days thereafter, the time above mentioned being exclusive of the day of service, or judgment by default may be taken against you.

Given under my hand and the seal of the United States District Court for the District of Arizona, this 14 day of August, A. D. 1913.

[Seal] (Signed) ALLAN B. JAYNES,
Clerk of said District Court.
By Frank E. McCrary,
Deputy.

U. S. MARSHAL'S RETURN.

Received this writ at Phoenix, Ariz., Aug. 14, 1913, and executed the same Aug. 16, 1913, at Tucson, Ariz., by delivering a true and certified copy hereof, to which was attached a copy of the bill of complaint filed herein, to Alfred Doneau. The said Alfred Doneau at the time being the Statutory Agent of the defendant corporation the Southern Pacific Company.

(Signed) C. A. OVERLOCK,
U. S. Marshal.
By D. N. Willits,
Chief Deputy.

Marshal's fees in service.	\$4.00
Expenses of service.	17.95
	<hr/>
	\$21.95

[Endorsements]: Marshal's Docket No. 358. No. 100. No. 5 (Tucson). United States District Court District of Arizona. United States of America vs. Southern Pacific Co. Summons. Filed Aug. 18, 1913. Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. [14]

[Answer.]

*In the District Court of the United States, for the
District of Arizona.*

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC COMPANY,
Defendant.

Comes now the above-named defendant, Southern Pacific Company, and answering plaintiff's complaint on file herein, admits and denies as follows:

Admits that it is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, and that it has an office and place of business at Benson, in the State of Arizona.

Admits that during all the times mentioned in plaintiff's complaint herein defendant was and is a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Answering plaintiff's alleged first cause of action, set out in its complaint on file herein, defendant specifically denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of [15] Arizona, within the jurisdiction of this court, or at any other time, or place, or at all, required or permitted its certain engineer and employee, to wit: Billy F. Eaker, to be and remain on duty as such for a longer period than sixteen consecutive hours.

Admits that the said Billy F. Eaker was employed by the defendant herein, and on the dates mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra,

drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted Billy F. Eaker to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said Act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum of five hundred dollars, or in any other sum, or amount, or at all.

Answering plaintiff's alleged second cause of action, set out in its complaint on file herein, defendant specifically denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of [16] Arizona, within the jurisdiction of this court, or at any other time, or place, or at all, required or permitted its certain fireman and employee, to wit: Frank H. Kempf, to be and remain on duty as such for a longer period than sixteen consecutive hours.

Admits that the said Frank H. Kempf was employed by the defendant herein, and on the dates

mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted Frank H. Kempf to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum of five hundred dollars, or in any other sum, or amount, or at all.

Answering plaintiff's alleged third cause of action, set out in its complaint on file herein, defendant specifically denies that in violation of the act of Congress known as "An act to promote the safety of employees and travelers on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its [17] line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jurisdiction of this court, or at any other time, or place, or at all, required or permitted its certain conductor and employee, to wit: B. T. Sullivan, to be and remain on duty as such for a longer period than sixteen

consecutive hours.

Admits that the said B. T. Sullivan was employed by the defendant herein, and on the dates mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted B. T. Sullivan to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum of five hundred dollars, or in any other sum, or amount, or at all.

Answering plaintiff's alleged fourth cause of action, set out in its complaint on file herein, defendant specifically denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes [18] at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jurisdiction of this court, or at any other time, or place, or at all, required or permitted its certain trainman

and employee, to wit: W. E. Brown, to be and remain on duty as such for a longer period than sixteen consecutive hours.

Admits that the said W. E. Brown was employed by the defendant herein, and on the dates mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted W. E. Brown to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum of five hundred dollars, or in any other sum, or amounts, or at all.

Answering plaintiff's alleged fifth cause of action, set out in its complaint on file herein, defendant specifically denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers [19] on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its line of railroad at and between the stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jur-

isdiction of this court, or at any other time, or place, or at all, required or permitted its certain trainman and employee, to wit: H. F. Peacock, to be and remain on duty as such for a longer period than sixteen consecutive hours.

Admits that the said H. F. Peacock was employed by the defendant herein, and on the dates mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted H. F. Peacock to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum of five hundred dollars, or in any other sum, or amount, or at all.

Answering plaintiff's alleged sixth cause of action, set out in its complaint on file herein, defendant specifically [20] denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers on railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), that this defendant, beginning at the hour of 5:30 o'clock A. M. on December 21, 1912, upon its line of railroad at and between the

stations of Lordsburg, in the State of New Mexico, and Cochise, in the State of Arizona, within the jurisdiction of this court, or at any other time, or place, or at all, required or permitted its certain trainman and employee, to wit: C. G. Harrison, to be and remain on duty as such for a longer period than sixteen consecutive hours.

Admits that the said C. G. Harrison was employed by the defendant herein, and on the dates mentioned in plaintiff's complaint was engaged in and connected with the movement of said defendant's train, extra, drawn by its own locomotive engine No. 2813, and that the said train was then and there engaged in the movement of interstate traffic; but denies that defendant required or permitted C. G. Harrison to remain on duty continuously for more than sixteen consecutive hours as charged in plaintiff's complaint.

Defendant denies that at the time and place or times and places alleged in plaintiff's complaint, or at any other time or place, that this defendant violated the said act of Congress referred to in plaintiff's complaint, and denies that this defendant is liable to the plaintiff in the sum or five hundred dollars, or in any other sum, or amount, or at all.

[21]

Defendant, for its answer herein to plaintiff's alleged causes of action Nos. 7, 8, 9, 10, 11 and 12, in its complaint herein contained, admits that during all the times mentioned therein it was a common carrier engaged in interstate commerce by railroad in the State of Arizona.

Admits that the persons named in the above-

numbered counts in plaintiff's complaint were at the time mentioned employees of the defendant company.

Admits that the said persons, constituting the crew of extra No. 2794, mentioned in plaintiff's complaint, were called to leave Tucson at 5:50 A. M., which would put them on duty at 5:20 A. M. of the date mentioned, and were each and all of them relieved at 10:50 P. M. of the same date.

The defendant alleges, by way of relief and exoneration from the provisions of the statute in plaintiff's said complaint set out, that the said extra train No. 2794 was delayed and detained en route at a station called Esmond, in the county of Pima, State of Arizona, while en route on the day and date named in plaintiff's complaint for the period of one hour and thirty minutes on account of and by reason of the said train breaking-in-two, and that the said break-in-two and delay of one hour and thirty minutes was the result of a cause not known to the defendant or its officers, agents, or any of them in charge of said train and of such employees at the time said train and employees left Tucson, the terminal, from which it started at — A. M. on said date; and that the same was caused by an unavoidable accident and one that could not have been foreseen by this defendant or any of its officers, agents or employees; all of which and the [22] time of delay was promptly reported to the Interstate Commerce Commission by the defendant herein, together with the defendant's claim of exemption for the one hour and thirty minutes delay at Esmond as aforesaid.

Wherefore, defendant prays that the delay of one hour and thirty minutes, by reason of the unavoidable accident as aforesaid, be allowed defendant, and that the provisions of this act shall not apply to this defendant in the alleged causes of action contained in counts seven, eight, nine, ten, eleven and twelve set forth in plaintiff's complaint, and that the defendant go hence without day, together with its costs.

(Signed) FRANK COX and

FRANCIS M. HARTMAN,

Attorneys for Defendant.

[Endorsements]: No. 5 (Tucson). In the District Court of the United States for the District of Arizona. The United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Defendant's Answer. Filed Sept. 18, 1913, Allan B. Jaynes, Clerk. By Frank E. McCrary, Deputy. Frank Cox, Phoenix, Arizona, Francis M. Hartman, Tucson, Arizona, Attorneys for Defendant. Received copy of this answer on September 19, 1913. J. E. Morrison, U. S. Attorney. [23]

The following is a copy of the minute entry made on May 21, 1914:

[Minutes of Court—May 21, 1914.]

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Defendant.

Order Overruling Demurrer, etc.

On this day this cause came on for hearing on the demurrer of the plaintiff to the answer of the defendant to the 7th, 8th, 9th, 10th, 11th and 12th cause of action set forth in the complaint, and said demurrer was thereupon argued by M. C. List, Esquire, on behalf of the plaintiff, and by Francis M. Hartman, Esquire, on behalf of the defendant, and was submitted to the Court for decision, and thereupon it was ordered that said demurrer be overruled, to which order and ruling of the Court the plaintiff, by its counsel, then and there in open court excepted. The plaintiff declined to amend its complaint with respect to the 7th, 8th, 9th, 10th, 11th and 12th, causes of action set forth therein, and declined to plead further with respect thereto but elected to stand upon the pleadings, and thereupon the cause was called for trial upon the 1st, 2d, 3d, 4th, 5th and 6th cause of action set forth in the complaint. Whereupon the Clerk was ordered to draw eighteen names from the box wherein he had deposited in the presence of the Court the names of the jurors summoned and not excused, and the names of eighteen persons were thereupon drawn and all answering thereto respectively, took their places in the jury-box. The said jurors were then sworn and examined on their *voir dire*. The panel being now full and complete and said jurors in the jury-box having been passed for cause by both the plaintiff and the defendant, the respective parties exercised their right of peremptory challenge and the follow-

ing named jurors were called according to law to constitute the jury, viz.: A. Sahperd, J. W. Kellum, Richard Starr, Harry P. Suman, Kenneth Brown, H. F. Schurrer, W. G. Powers, J. E. Lindley, S. M. Warner, C. A. Beardsley, Wm. Powers, and Don Blankenship, who were duly sworn to well and truly try the issues joined between [24] the United States of America and the defendant herein. E. B. Van Vreen was duly sworn as court reporter herein. The respective counsel then read aloud the pleadings herein to the jury and stated the issues to be tried herein. Upon motion of the plaintiff, it is ordered that all witnesses be called and placed under the rule, and thereupon Frank H. Kempf, Billy F. Eaker, B. T. Sullivan, H. J. Peacock, C. Q. Harrison, and J. H. Dyer, were called as witnesses for the plaintiff, sworn, and placed under the rule; and W. Wilson, J. E. Lovejoy, were called, as witnesses for the defendant, sworn, and placed under the rule. The plaintiff then, to maintain upon its part the issues herein, called as witness Wm. Wilson, who was duly examined and cross-examined, and offered two exhibits, Exhibit "A" and "B," which were admitted in evidence and filed, and this being the regular time for adjournment of this court, the Court duly instructed the jury and excused them from further service in this case until Friday, the 22d day of May, A. D. 1914, at ten o'clock A. M., to which time the further trial of this case is now ordered continued.

[25]

No. 5—(TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

Against

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Verdict.

We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the said plaintiff as to each and all of the counts from one to six inclusive.

(Signed) K. B. BROWN,

Foreman.

[Endorsements]: No. 5 (Tucson). District Court of the United States, District of Arizona. United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Verdict. Filed May 22, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy Clerk. [26]

No. 5.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Judgment.

This cause came on for trial before the above-named court on the 21st day of May, 1914, at the regular May, 1914, Term thereof, held at Tucson, Thomas A. Flynn, United States Attorney, M. C. List, and Samuel L. Pattee, appearing as attorneys for the plaintiff, and Francis M. Hartman, Esquire, and B. O. Baker, Esquire, appearing as attorneys for the defendant; thereupon the plaintiff demurred to the answer of the defendant to the seventh, eighth, ninth, tenth, eleventh and twelfth causes of action set forth in the complaint of plaintiff and, after argument, it was ordered that said demurrer be overruled; thereupon a jury was duly empaneled and the cause proceeded to trial upon the first, second, third, fourth, fifth and sixth causes of action set forth in the complaint, and evidence was introduced on behalf of the respective parties, and at the close of the evidence the Court instructed the jury to return a verdict in favor of the plaintiff upon the first, second, third, fourth, fifth and sixth causes of action aforesaid, and thereupon the jury returned a verdict in favor of the plaintiff upon each and all of said causes of action; and the plaintiff having elected to stand upon its demurrer to the answer to the seventh, eighth, ninth, tenth, eleventh and twelfth causes of action and not to plead further with respect thereto, it was ordered that judgment be entered in favor of the defendant upon those causes of action; thereafter the Court fixed and determined the penalty to be imposed upon each of the causes

of action so found in favor of the plaintiff as follows, upon the first and second causes of action at the sum of One Dollar (\$1.00) each, and upon the third, fourth, fifth and sixth causes of action, at the sum of One Hundred Dollars (\$100.00) each, and did order that judgment be entered accordingly:

Now, therefore, pursuant to said orders for judgment and the [27] proceedings aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED, that the plaintiff, the United States of America, do have and recover of and from the defendant, Southern Pacific Company, a corporation, the sum of Four Hundred and Two Dollars (\$402.00), the amount of the penalties fixed as aforesaid, and that it do have execution therefor.

And it is further ORDERED, adjudged and decreed, that the said plaintiff take nothing by the seventh, eighth, ninth, tenth, eleventh, and twelfth causes of action in its complaint, and that as to each and all those causes of action the defendant go hence without day.

And it is FURTHER ORDERED, ADJUDGED AND DECREED, that neither party recover any costs against the other, but that each party pay all costs incurred by it.

In accordance with stipulation this day made by the parties hereto, it is ORDERED that the execution on said judgment be stayed for forty-two days from the date of said verdict. [28]

*In the United States District Court for the District
of Arizona.*

No. 5—TUCSON.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on the 22d day of May, 1914, the above-entitled cause came on for trial before the above-entitled court and a jury duly impaneled, Honorable William H. Sawtell, presiding. Plaintiff appearing by Messrs. Samuel L. Pattee and Monroe C. List, its counsel, and the defendant appearing by Francis M. Hartman and B. O. Baker, its counsel, and the following proceedings were had:

[Testimony of William Wilson, for Plaintiff.]

WILLIAM WILSON, called as a witness on behalf of the plaintiff and first duly sworn, testified as follows:

Direct Examination.

(By Mr. LIST.)

My name is William Wilson. I am chief dispatcher of the Southern Pacific Company at Tucson, Arizona; have occupied that position for about six years. My duties as dispatcher are to keep a record of train and engine men, as to the time that they are

(Testimony of William Wilson.)

called and the time that they are released or go off duty, fill orders for cars, keep a record of the engines and cars, see that passenger and freight trains make time and in general everything pertaining to the hours of service of train men and engine men. In December, 1912, the trains between Lordsburg and Benson were in my jurisdiction. (Witness here identifies train sheet handed him by counsel for [29] plaintiff.) This train sheet shows the train number, crews of the trains, conductors, engineers, firemen, engine number, the time they were called and relieved at different points. This train sheet was started at 12:01 A. M. and all the trains starting on their run at or after 12:01 A. M. are kept on this sheet until they have finished their run. This train sheet is made by the train dispatcher who is under my jurisdiction and under my orders. This is an official record of the company. (Witness identifies another train sheet handed him by counsel for plaintiff.) This train sheet shows train extra, engine No. 2813, December 21st, 1912, which was a local freight train running between Lordsburg and Benson. The employees on that train were called to leave on the morning of December 21st, 1912, for six A. M., which placed them on duty at 5:30 A. M. Mr. B. F. Eaker, Mr. Frank H. Kempf, Mr. B. T. Sullivan, Mr. W. E. Brown, Mr. H. F. Peacock and Mr. C. G. Harrison were the employees engaged in connection with the movement of this train. They had orders to take that train to Bowie when they reported at 5:30 A. M. When they started with that train from Lordsburg

(Testimony of William Wilson.)

their objective point was Benson. Benson was the final destination of the train. It arrived at Benson at 12:25 A. M. December 22d, 1912. Only a part of *the these* employees were still engaged in and connected with the movement of this train when it arrived at Benson, Conductor Sullivan and Brakemen Brown, Peacock and Harrison, and they were released from all service in connection with that train on December 22d, at 12:40 A. M. This train sheet does not show that they were in continuous service from the time they reported at Lordsburg until they were relieved at 12:40 A. M. December 22d. It shows a break in the service with respect to the conductor and the three brakemen. It shows that they [30] were relieved at Bowie at 9:15 A. M. until 11:40 A. M. and again at 1:20 P. M. until 2:20 P. M. and the balance of the time outside of these two releases they were in continuous service. The purpose of the first release at Bowie from 9:15 A. M. to 11:40 A. M. two hours and twenty-five minutes, was that it was necessary to use their engine for other service and their train was on the siding at Bowie, so far as I could say. This release was sent to the men by a message to the agent at Bowie. The agent is supposed to have delivered the message, he is the one in charge of that. We kept this message in the office of the chief dispatcher. (Witness here identified copy of message handed to him by counsel for the plaintiff, which document was thereupon offered in evidence by plaintiff, admitted and marked Government's Exhibit "A," and which is hereinafter

(Testimony of William Wilson.)

fully set forth.) This message was signed by dispatcher Glenn. He was on duty at that time. "W. H. L." referred to in this message is W. H. Lawrence, Agent at Bowie, and the initials "W. W." are my initials. The notation on the train sheet that these employees were relieved from 9:15 to 11:40 was made from the message received from the conductor. That notation was made by dispatcher Glenn, who was on duty at that time from eight in the morning until four in the afternoon. I have a copy of the message signed by the conductor to the dispatcher.

(Witness here identifies copy of message handed him by counsel for plaintiff, which was offered in evidence by the plaintiff, and admitted and marked Government's Exhibit "B," and which is hereinafter fully set forth.) The letters "Bo." on this message is the call for Bowie, and [31] it shows that it was received at 1:58 P. M. by "G."—by Mr. Glenn. I don't know what character of release was given to the conductor and brakemen at Bowie. There was a message sent to the conductor at Bowie, relieving the conductor and brakemen from 1:20 P. M. to 2:20 P. M. but no copy of this message was retained. I could not at this time say positively what the purpose of that release was. I did not make any report that this hour was allowed them for dinner. The engineer and fireman of this train were finally relieved at 10:29 P. M. December 21, 1912, at Cochise.

Q. (By Counsel for Government.) Do you know whether or not they were paid for continuous service

(Testimony of William Wilson.)

from 5:30 A. M. until 10:29 P. M. ?

Which question was objected to by counsel for the defendant on the ground that the same was irrelevant and immaterial and that the question as to whether or not the men were paid for the time from 5:30 A. M. to 10:29 P. M. had nothing whatever to do with this case. This objection was overruled by the Court and to the ruling of the Court the defendant then and there by its counsel excepted on the record.

A. I cannot answer that, I don't know. The engineer and fireman of this train, B. F. Eaker and Frank H. Kempf, were released at Bowie at 1:30 P. M. to 2:30 P. M. The record does not show for what purpose. Outside of that one hour for which they were released at Bowie, they were in continuous service from 5:30 A. M. to 10:29 P. M. That release to the engineer and fireman was sent over the wire in the form of a message, I could not say to whom it was addressed, but it was sent by some one in the office of the Chief Dispatcher—Mr. Glenn—I know I told the dispatcher, Mr. Glenn to send it. The notation here on the train sheet of the engineer and fireman being relieved one hour at Bowie, [32] from 1:30 to 2:30 P. M., is made in the handwriting of Patrick Flynn, a dispatcher who came on duty at four P. M.

Cross-examination.

(By Mr. HARTMAN.)

(Witness handed train sheet by counsel for defendant.)

“This is the train sheet showing train extra west—shows the number of the train, the number of the en-

(Testimony of William Wilson.)

gine on the train, the conductor's name—it shows that the train was called to leave Lordsburg at 6:00 A. M., and shows the time it arrived at Bowie, and the time they were relieved and went on duty again at Bowie, the time the engine crew was released at Cochise and the time the train crew was released at Benson. The trainmen and the enginemen are directly under me as to when they shall leave a terminal and when they shall be relieved.”

Q. (By Counsel for Defendant.) What are the instructions issued to you from the Superintendent or from the officers of the company over you with reference to complying with the provisions of what is known as the sixteen hour law?

To which counsel for the Government objected, which objections was sustained and to which ruling of the Court the defendant, by its counsel, then and there excepted on the record.

Q. Did you as chief dispatcher issue any instructions or did you at that time as such chief dispatcher issue any instructions to the employees of the company directly under you, including trainmen and enginemen, with reference to abiding by all the provisions of what is known as the sixteen hour law?

A. Yes, sir. [33]

To which question and answer the Government, by its counsel, objected, which objection was sustained by the Court and the answer ordered stricken out. To which ruling of the Court defendant, by its counsel, then and there excepted on the record.

While I was chief dispatcher of this division there

(Testimony of William Wilson.)

were instructions issued in writing to the employees that they were not to perform any service in excess of sixteen hours.

(Witness identifies a document handed to him by counsel for defendant, and which was marked for identification "Defendant's Exhibit 3," and which is hereinafter fully set forth.)

I have seen this document (referring to document marked "Defendant's Exhibit 3 for Identification") on file in the files of my office. This is one of the instructions issued by the company with reference to the sixteen hour law. It was issued February 11, 1910.

(Witness identifies another document shown him by counsel for defendant, which is marked for identification "Defendant's Exhibit 4," and is hereinafter fully set forth.)

I have seen this before or a copy of it or one just like it on file in my office. It is a bulletin and is a reissue of all bulletins in effect on the Tucson Division, and was issued August 16, 1912. These bulletins when they were issued were posted on the different bulletin-boards and copies sent to the different departments and to those to whom they were issued.

(Witness identifies another document handed him by counsel for defendant, which is marked for identification "Defendant's Exhibit No. 5," which is hereinafter fully set forth.) [34]

I have seen this document. There is a copy of it on file in my office on what we call the "Sixteen Hour File." We keep a regular file in my office with

(Testimony of William Wilson.)
reference to the sixteen hour law.

Hereupon a recess was taken until Friday, May 23d, 1914, at ten o'clock A. M.

Friday, May 23d, 1914, 10:00 A. M.

WILLIAM WILSON, on the stand.

Cross-examination (Continued).

(Witness handed a document marked for identification "Defendant's Exhibit No. 5.")

Mr. W. H. Whalen, who signed this document, was at that time Superintendent of the Tucson Division of the Southern Pacific Company, which includes that portion of the road from Lordsburg to Benson. The regular run of this train referred to, Extra West, Engine No. 2813, December 21, 1912, was from Lordsburg to Benson. It was a local freight train.

Q. (By Counsel for Defendant.) How long were these men on duty?

Which question was objected to by counsel for the Government as calling for a conclusion of the witness, the objection sustained by the Court, and defendant, by its counsel, excepted on the record.

When this train reached Bowie the conductor and three brakeman were relieved from duty from 9:15 A. M. until 11:40 P. M. From the time that they went on duty at 5:30 A. M. at Lordsburg, until they were relieved at Bowie, at 9:15 A. M., is three hours and forty-five minutes, and they were relieved from 9:15 A. M. to 11:40 A. M., two hours and forty-five minutes. [35] During the time that they were relieved, two hours and twenty-five minutes, they were

(Testimony of William Wilson.)

in the town of Bowie. From 1:20 P. M. to 2:20 P. M. they were also relieved at Bowie one hour. They were at Bowie altogether five hours and five minutes. They reported at 2:20 P. M. to go to work and worked from 2:20 P. M. to 12:40 A. M., December 22, 1912.

Q. (By Counsel for Defendant.) And how long were they on duty, counting out the two hours and twenty-five minutes and the one hour's time they were relieved at Bowie?

To which question counsel for the Government objected on the ground that the same called for a conclusion of law, which objection was sustained by the Court and to which ruling of the Court in sustaining said objection the defendant, by its counsel, then and there duly excepted.

From 5:30 A. M., when the men were considered on duty at Lordsburg, until they were finally relieved, counting out the two hours and twenty-five minutes and the one hour's time they were relieved at Bowie, would be fifteen hours and forty-five minutes, and in that fifteen hours and forty-five minutes is included the time that they were on duty at Bowie from 11:40 to 1:20 P. M., one hour and forty minutes.

Q. (By Counsel for Defendant.) What did you, as chief dispatcher for this company on this division, and the other officers of the company do, as far as you know of your own knowledge, in this particular case mentioned in this complaint as to complying with this law?

(Testimony of William Wilson.)

Which question was objected to by counsel for the Government as incompetent, irrelevant and immaterial and not tending to prove any issue in the case, which objection was sustained by the Court, and to which ruling of the Court defendant, by its counsel, then and there duly excepted. [36]

By the COURT.—I want it understood that you may introduce testimony as to what was done in this particular case, that is, you may prove the facts connected with this particular case—what this witness did or any other man did with reference to this particular train.

I issued instructions that the train crew be released from 9:15 A. M. to 11:40 A. M. and from 1:20 P. M. to 2:20 P. M., and I issued instructions that the engine crew be released from 1:30 P. M. to 2:30 P. M. that I may use that time to get them as near to Benson as possible; that I may consider the period they were released as being off duty. Mr. Eaker's engine did not bring the train into Bowie. Mr. Eaker with his regular engine was helping another train from San Simon to Steins, and returned from Steins to Bowie arriving at Bowie at 1:30 P. M., and was released from 1:30 P. M. to 2:30 P. M., one hour. When Mr. Eaker and his fireman arrived at Bowie at 1:30 he was released. He was not required to perform any duty for the company from that time until two-thirty P. M. When the train crew was released at 9:15 A. M. until 11:40 A. M., at Bowie, they were not required to perform any duty whatever for the company during the two hours and twenty-five min-

(Testimony of William Wilson.)

utes. They were not required to do anything for the company either during all the time from 11:40 to 1:20 P. M., while they were on duty. They were not required to do anything for the company from 1:20 P. M. to 2:20 P. M. They could go and come and do as they chose. Their time was their own. They were not waiting around expecting to be called and to go on duty during the periods of time they were released. That applied to both periods as to the train crew, from 9:15 A. M. to 11:40 A. M., and from 1:20 P. M. to 2:20 P. M. When this train reached Simon Mr. Eaker and Mr. Kempf took their engine and turned around and went back to Steins helping another train up the hill. They then came back to [37] Bowie and caught up with their train there. The train was pulled in from Simon to Bowie by another engine. When Mr. Eaker and Mr. Kempf got back to Bowie with their regular engine they took the train with it. I stopped Mr. Eaker and Mr. Kempf before they got to the end of their run on account of the sixteen hour law and relieved them at 10:29 P. M., at Cochise Station. Cochise is not a terminal and was not the terminal for that train and was not the end of the run for that train. I relieved them at that place at 10:29 P. M. to comply with the sixteen hour law and to keep them from working longer than sixteen consecutive hours. In order to get the train into Benson to the end of this run it was necessary to deadhead another engine crew from Benson to Cochise, to relieve Engineer Eaker and Fireman Kempf. Neither Mr. Eaker nor Mr. Kempf

(Testimony of William Wilson.)

performed any duty whatever for the company after 10:29 P. M. that night. They deadheaded from Cochise into Benson. I have been to Bowie. They were relieved at Bowie and remained there and could have obtained food and rest and recreation, at least I have gotten them there myself.

Q. (By Counsel for Defendant.) Is two hours and twenty-five minutes sufficient time for rest and recreation?

To which question the Government, by its counsel, objected, which objection was sustained by the Court, and to which ruling of the Court in sustaining said objection defendant, by its counsel, then and there duly excepted.

Q. (By Counsel for Defendant.) Was the one hour that the train crew was released from 1:20 P. M. to 2:20 P. M., and the one hour that the engine crew was released from 1:30 P. M. to 2:30 P. M., sufficient for these men at that time and place for rest?

A. Yes, sir. [38]

To which question and answer the Government, by its counsel, objected, which objection was sustained by the Court and the answer excluded from the consideration of the jury, to which ruling by the Court the defendant, by its counsel, then and there duly excepted.

The engineer and fireman were not relieved by me from 1:30 P. M. to 2:30 P. M. to eat. My instructions were not to that effect. Neither were the conductor and brakemen relieved for that purpose.

Q. (By Counsel for Defendant.) Mr. Wilson,

(Testimony of William Wilson.)

was Billy F. Eaker on duty for a longer period than sixteen consecutive hours on December 21st, 1912, as alleged in the complaint, from 5:30 o'clock A. M. to 10:29 o'clock P. M. of that day?

To which question the Government, by its counsel, then and there objected, which objection was sustained by the Court, and to which ruling of the Court defendant, by its counsel, then and there duly excepted.

By the COURT.—You may show the fact but his statement would be a conclusion and the objection will be sustained.

To which ruling of the Court defendant, by its counsel, then and there excepted on the record.

By Mr. HARTMAN (Counsel for Defendant).—We desire to ask the same question of the witness for the record as to each of the six counts.

By the COURT.—Very well, let the record show that you have asked that question.

By Mr. LIST (Counsel for the Government).—And the same objection.

By the COURT.—The same objection noted and the same ruling.

By Mr. HARTMAN.—And an exception. [39]

Redirect Examination.

(By Mr. LIST.)

The release of one hour was not given to the engine crew and train crew for the purpose of allowing them to eat. It was given for the purpose so it could be used as being off duty and working them to get them nearer to Benson. I cannot state now what the con-

(Testimony of William Wilson.)

ditions were in the yard at Bowie or in the roundhouse as to necessitate giving that release of one hour. I could not refer to any records which I have to ascertain that information. The agent at Bowie possibly would have such records. I sent these release messages or authorized the messages sent. So far as I can recall it was on account of conditions. It was not known exactly when we could get them out. The train did not leave Bowie until six P. M. They were there switching around and meeting other trains. The reason the first release was given to the train crew for two hours and twenty-five minutes was, at that time it looked as though the engine would be back to Bowie and start work about 11:40. The message was addressed to the roundhouse foreman and to the agent at Bowie. That message did not tell them any definite period to release the crew. It simply said, "Release them." I don't know just what the conditions were to make the release just 2 hours and 25 minutes, from 9:15 to 11:40 A. M. these men were not under any responsibility at all. I don't know where they went or what they did, only they must have remained at Bowie. If the release was definite from 9:15 A. M. to 11:40 A. M., they would report again at 11:40 A. M. without being called. From 11:40 until the next release went into effect the men were still at Bowie under instructions from me, but they were not working. I could not say whether or not they reported at 11:40 A. M. When the train is in the yard limits the agent has charge of matters of that kind. There is also a [40] company

(Testimony of William Wilson.)

watchman to look after the train. If the men were not released for a definite period and had to be called to go on duty again the agent would have the yard clerk call them. He would simply have to hunt them. There is no way for them to get out of town; they would have to stay in Bowie. They didn't know when they were released how long they would be at Bowie. At the time the last release of the whole train crew for one hour a local freight train going east arrived at Bowie at 2:15 P. M. They (the train crew released) couldn't have gotten out; they would have to stay there to meet every train so far as that train was concerned. They did all their work switching in the yard after 2:30 P. M. I can't say why they did not do it between 1:20 and 2:20; possibly the engine might not have been ready. When their engine got in there to Bowie, as a rule they took oil and water and sometimes the roundhouse foreman will do a small job on the engine, but in this case I can't say what work there was to do on the engine. The local crews and probably other train crews on the slow train had lunch at Bowie and also at one or two other places, but I cannot say whether these men had their lunch there at that time. Sometimes the men carry their lunches with them in the caboose. In this case I would say that these men lived in Benson. If conditions had been normal at Bowie at that time this release would not have been given. The release was given to cover the delays which we saw would be encountered there at Bowie. They had a lot of switching to do.

(Testimony of William Wilson.)

Recross-examination.

(By Mr. HARTMAN.)

The engine crew were deadheaded from Benson to Cochise to relieve Eaker and Kempf. This train didn't leave Bowie on that day until 6:00 P. M. After 2:30 P. M. they were switching and making up their train, which was a part of their duty, and to load and unload freight along the road.

Redirect Examination.

(By Mr. LIST.)

The engine crew which was deadheaded from Benson to Cochise took this same engine at Cochise. As well as I remember they went over on passenger train No. 8. Ordinarily that train [41] arrived at Cochise, at 10:15 P. M. I don't know what time Extra West, Engine 2813, passed Cochise because the office at that place was closed at night. It is the duty of the train dispatcher when he gives a release to note the same on the train sheet when he gets a message from the parties who have been released. He writes it on the train sheet when he gets a message from them. We always try to get a message from them for the record. If I had wanted these men at Bowie to go to work before the two hours and twenty-five minutes was up I would have instructed the agent to call them. There is an address book of all trains and engine-men at Tucson and at all other places where they go off duty. When they are wanted they are called provided they have had their rest. At other places ordinarily they are in the caboose. There was no address book at Bowie. In case they

(Testimony of William Wilson.)

were wanted it would have been necessary to send out and notify them. I could not have cancelled that release until I had gotten the word to the men. If I had found we wanted them at ten o'clock I had a right to call them, but I didn't need them.

Examination by the Court.

I cannot state just what the cause of the delay was at that time at Bowie, but Bowie is quite an important interchange point, especially in the winter time, and becomes congested; that is, a great many trains pass through there and there may be not enough engines to handle them, and the helper engine may have other work so that we would have to take one of these crews to handle some freight train. As well as I remember, it was owing to the condition of the yards and the weather that required the trains to stay there so long. The only records we have is the delay reports.

Recross-examination. [42]

(By Mr. HARTMAN.)

“During the two hours and twenty-five minutes this train crew was relieved at Bowie from 9:15 A. M. to 11:40 A. M., they were not waiting around expecting to be called or to have the release changed on them. In case it had become necessary for any good reason and occasion demanded it to have changed the period of release and we had called these men to go to work before 11:40 A. M., I would have had to issue instructions to the agent as to what time I wanted them and he would have endeavored to get them, and if he had not been able to get them

(Testimony of William Wilson.)

started to work at the time specified he would then have advised me. If the agent could not have found the men the call would have had to have been changed and the men would have been subject to no reprimand on that account. They had a right to go out into the country if they wanted to, as long as they showed up at 11:40 A. M., and I had no right to change the time of the release on them unless I could get hold of them."

[Testimony of B. T. Sullivan, for Plaintiff.]

B. T. SULLIVAN, being first duly sworn, testified on behalf of the plaintiff as follows:

Direct Examination.

(By Mr. LIST.)

"My name is B. T. Sullivan and I am an employee of the Southern Pacific Company and have been so employed about three years. I have been running from Lordsburg to Benson on the regular freight run. I was conductor of Extra West, Engine 2813, on December 21st, 1912. I have a record of the trip and also have a recollection of the particular trip. I made a record in my train book at the time I was released at Bowie and I turned in the records at the time to the company at the time. [43] I made out a time slip for the trip and turned in a delay report.

(Witness identifies document handed him by counsel for the Government.)

That is my time slip or report I made for that trip.

(The document referred to was offered in evidence and admitted and marked Government's Exhibit

(Testimony of B. T. Sullivan.)

“C,” and is hereinafter fully set forth.)

(Witness identifies another document handed him by counsel for the Government.)

“That is the delay report of that trip, December 21, 1912.”

(The document so identified by the witness was offered in evidence by the plaintiff and admitted and marked, Defendant’s Exhibit “D,” and is hereinafter fully set forth.)

“I made this delay report myself. Refreshing my recollection from this report, I was called to leave Lordsburg at 6:00 A. M., and left there at 6:00 A. M., arriving at Bowie at 9:15 A. M., was released at Bowie at 9:15 A. M. to 11:40 A. M., two hours and twenty-five minutes; was released at Bowie at 1:20 P. M. to go to work at 2:20 P. M. and was off duty.

By Mr. LIST (Attorney for the Government.)—I move that that be stricken from the record, that he was one hour off duty.

By Mr. HARTMAN (Counsel for Defendant).—I object; he knows whether he was off duty or not.

The COURT.—The objection is sustained and the witness’ statement that he was off duty, Gentlemen, is excluded, that is a question of law to be decided from the evidence.

“I was sitting around Bowie, sitting around reading during this time, and from 2:20 on I got my train together and got ready to leave town. The delay report shows a number of delays there. Delay by other trains. Letting passenger [44] trains by, waiting for another engine five hours and fifteen

(Testimony of B. T. Sullivan.)

minutes, taking water, lunch, blocked by other trains so we could not get out. We were blocked by these other trains after we went to work. We were blocked after we went to work, after 2:20 and were delayed from 2:20 P. M. to 6:00 P. M. by these various causes. I don't remember what prevented us from getting out at 1:30 when engine 2813 got back. I don't know why the release from 1:20 P. M. to 2:20 P. M. was given us. The operator gave us the release. The operator said you are released for one hour. The operator did not say why. We could not have gotten out of the yard at 1:30 because we were blocked. The operator also gave us the release of two hours and twenty-five minutes, which was verbal. The operator told me I was released until 11:40 A. M. If I remember right, he didn't say released until called; he said released until 11:40 A. M. When the release was given us from 9:15 to 11:40 they are supposed to call us after the time of the release and we are off until we are called. From 9:15 to 11:40 I was around the hotel there reading and the brakemen were in the caboose and around the hotel and sitting under the trees. We were released that morning according to my train book for that length of time. The train book shows released at Bowie at 9:15 A. M., called to go to work at 11:40 A. M. They called us at 11:40 A. M. to go to work as soon as we can after that. According to my train book we went off duty at 9:15 A. M. I didn't know when I was going to be called.

(Testimony of B. T. Sullivan.)

Cross-examination.

(By Mr. HARTMAN.)

I was not doing anything during the two hours and twenty-five minutes, only just staying around the hotel. I didn't perform [45] any duty for the company during that time. I knew when I was released at 9:15 that I would not have to go back to work until 11:40 A. M., and during that time I could do as I pleased. I could have gotten into an automobile and gone out in the country and got back at 11:40 and would have been in the clear and so would the brakemen. I had a right to go and come as I chose—we were free. Our time was absolutely our own from 9:15 A. M. until 11:40 A. M., and that applied to the brakemen too. From 1:20 P. M. to 2:20 P. M. we were relieved for one hour. We had to be back after that one hour, and when we were relieved at 1:20 we knew we did not have to go back to work until 2:20 P. M. We were not waiting around expecting to go to work during that period. Our time was absolutely our own during that time. That applied to the brakemen too, and we do as we like. We were free to come and go as long as we were back at 2:20, and we were not working for the company during that time and neither were the brakemen. Our regular engine was used to help a train from Simon to Steins. I think it is about thirty miles from Steins to Bowie. Mr. Eaker and Mr. Kempf were running that engine. I knew that we could not go out until that engine came back. I think that engine got back at 1:20 P. M. and that is

(Testimony of B. T. Sullivan.)

when they released us again. This train which I had was the regular local between Lordsburg and Benson. The regular run was from Lordsburg to Benson and the termini for that train were Lordsburg and Benson. When we left Lordsburg we expected to go to Benson that day. Mr. Kempf and Mr. Eaker, the engineer and fireman, didn't go all the way through. They stopped at Cochise at 10:29 P. M. because their sixteen hours was up. We (the train crew) had plenty of time to go on to Benson and we had got another engineer [46] and fireman at Cochise. They came from Benson. The company did not have any extra engineers and fireman at Cochise—had to send them out from Benson. They used the same engine to pull the train into Benson.

Examination by the COURT.

The conductor turns in a report showing the cause of delay. We were delayed at Bowie five hours and fifteen minutes waiting for the engine, twenty minutes for number nine, ten minutes for number ten, two hours switching, forty minutes blocked by number thirty-two, thirty minutes by extra 2759, and twenty minutes blocked by passenger train.

(Witness here identifies document handed him by counsel for defendant marked Exhibit No. 6 for Identification.)

This is the telegram sent by me to Mr. Wilson, chief dispatcher at Tucson.

(Witness also identifies another document marked for identification, Defendant's Exhibit No. 7.)

(Testimony of B. T. Sullivan.)

This is a message I received from Mr. Wilson to which I sent one in reply. I received this message from Mr. Wilson at Willcox, after we left Bowie. On that run with that local freight train we would ordinarily get out of Bowie in an hour and a half, sometimes in an hour, sometimes longer. We have to do switching, loading and unloading. After our engine returned to Bowie it had to be taken to the roundhouse.

Redirect Examination.

(By Mr. LIST.)

When this release was given at 9:15 it stated that we were to be off duty until 11:40. Until our engine got back. We could not tell how long we would be off. I was figuring we could get in was the reason I didn't send the message to the dispatcher until after we left Bowie. The reason I didn't [47] wire him at Bowie is because the Dispatcher knew we was off at Bowie. We generally called his attention to it. It was not necessary to wire the dispatcher from Bowie. I had no occasion to wire the dispatcher from Bowie. I did not receive any message at Bowie that I was released; the operator told me. I would be off duty till called.

(Witness reads from train book at the request of counsel for plaintiff:) "Released 9:15 A. M., called to work 11:40 A. M.; released 1:20 to go to work at 2:20."

When we are released at 9:15 to go to work at 11:40 it is the custom to call us at 11:40 whether the release is for a definite or indefinite period.

(Testimony of B. T. Sullivan.)

Examination by the COURT.

I stated I was released at Bowie at 9:15 and called to go to work at 11:40. I am referring to my train book which states that the release—that I was released at 9:15 and called to go to work at 11:40. My understanding was that I was released until 11:40. I was released at 9:15 until 11:40. The operator said that to me when he released me.

Redirect Examination.

(By Mr. LIST.)

My home at that time was at Benson as well as the other members of the train crew, also the engineer and fireman.

Recross-examination.

(By Mr. HARTMAN.)

There is a hotel at Bowie, a store, restaurant, reading-room, newsstand and billiard-room. There is a hotel at the depot where we can get sleeping accommodations.

[Testimony of B. F. Eaker, for Plaintiff.]

B. F. EAKER, being first duly sworn, testified on behalf of the plaintiff as follows: [48]

Direct Examination.

(By Mr. LIST.)

My name is B. F. Eaker. I am a locomotive engineer and have been since 1906. In December, 1912, I was running on the Southern Pacific on the Benson to Lordsburg local. I was the engineer on Extra West, Engine 2813, on December 21, 1912. I made

(Testimony of B. F. Eaker.)

out a time slip on that trip.

(Witness identified a document handed him by plaintiff's counsel.)

This is my time slip for that trip which I turned in to the company.

(Document referred to offered in evidence by the plaintiff, admitted and marked Government's Exhibit "E," and is hereinafter fully set forth.)

Referring to this time slip I came out of Lordsburg on this trip on engine 2813 to San Simon, from San Simon back to Stein's and ran light from Steins to Bowie. I got back to Bowie at 1:20 P. M. When I got back I ate dinner and purchased a cigar and smoked and then went out on the platform and went to sleep. Myself and my fireman ate dinner as soon as we got back. There was a release given us. I don't remember who gave it to us. I don't think he said anything to me. He gave me a message releasing the engineer and fireman for at least one hour. Someone came out on the platform and waked me up and told me we were going to work at 2:30 and we went back to our engine. From that time on we were switching in the yard at Bowie for a number of hours and we were released at 10:29 P. M. at Cochise. Mr. Kempf was my fireman during this time.

Cross-examination.

(By Mr. HARTMAN.) [49]

Myself and Mr. Kempf left Lordsburg with our engine on that train and arrived at Bowie at 1:20

(Testimony of B. F. Eaker.)

P. M. We stopped with the engine before we got to Bowie at San Simon. Our engine was the regular engine for that train. We were supposed to take that train clear through to Benson with that engine. When we got into Bowie at 1:30 we received this message relieving us for one hour and when we received this message we knew that we would not have to go to work until that hour expired. During that time we were not expected to go to work. We could do what we pleased during that hour and we did do what we pleased. The hour was absolutely ours and we were not to perform any duty for the company during that time. I ate lunch, smoked a cigar and laid down and took a nap and got rested and someone woke me up and we went and got on our engine and went to work, switched around the yard awhile and then went to Benson. Our time was up at Cochise at 10:30 P. M., and we were relieved there at Cochise at 10:29 P. M. We quit work right there at Cochise and did not work any longer on that trip. Another engineer and fireman, Engineer Wilson and Fireman Houston, deadheaded out from Benson to Cochise and relieved us at Cochise. They were on our engine ten or fifteen minutes before our time was up waiting to relieve me. They got on our engine ten or fifteen minutes before our time was up. At 10:29 I climbed down off the engine and went back into the caboose of the train and went to bed and deadheaded on that train into Benson, and the fireman also. Neither of us worked any more after 10:29 on that trip.

(Testimony of B. F. Eaker.)

Q. (By Counsel for Defendant.) Were either you or your fireman required or permitted to be on duty or remain for a longer period than sixteen consecutive hours, to wit, from 5:30 o'clock A. M. on the 21st day of December, to 10:29 o'clock [50] P. M. on said day, as referred to in plaintiff's complaint?

By Mr. LIST.—Same objection—incompetent.

By the COURT.—The objection is sustained. It is a question for the Court and not for the witness.

To which ruling of the Court the defendant, by its counsel, then and there duly excepted.

Redirect Examination.

(By Mr. LIST.)

At 10:29 P. M. I went back to the caboose and went to bed. On this run we were all along the road switching and would sometimes eat lunch at Willcox and sometimes at Bowie. There was a regular eating house at Bowie.

WHEREUPON, the Government rested its case, and the defendant, to sustain the issues on its part, offered the following evidence:

[Testimony of J. E. Lovejoy, for Defendant.]

J. E. LOVEJOY, called as a witness on behalf of defendant and first duly sworn, testified as follows:

Direct Examination.

(By Mr. HARTMAN.)

I am chief clerk to the superintendent of the Southern Pacific Company at Tucson. I occupied the same position on December 21st, 1912. I have been in the railroad business for twenty-five years.

(Testimony of J. E. Lovejoy.)

(Witness is shown Government's Exhibit "C.")

This is a trip report made out by Mr. Sullivan. I have had considerable experience in handling the time of men and paying them. This is a standard form of conductor's trip report that we require the conductors to turn in covering each trip that they make, and it gives the time put in for the purpose of determining the amount of money due employees for the services performed. I know how conductors and [51] brakemen are paid. Am thoroughly familiar with the schedule under which they are paid.

By Mr. LIST (Counsel for the Government).—The reason we introduce the time slip is there are some notations on these slips. We admit that the time slip does not indicate the actual hours of service. It was not introduced for the purpose of showing that they were actually on duty more than sixteen hours—not for that purpose.

(Witness is shown defendant's exhibit heretofore marked for identification No. 3.)

This is bulletin No. 1729, signed and issued by W. H. Whalen. Mr. Whalen at that time was the Superintendent of the Tucson Division of the Southern Pacific Company.

Defendant thereupon offered in evidence the said exhibit marked for identification Defendant's Exhibit No. 3, and which is hereinafter fully set forth, to which offer the plaintiff, by its counsel, objected on the ground that the same was incompetent, which objection was sustained by the Court, and to which

(Testimony of J. E. Lovejoy.)

ruling of the Court defendant, by its counsel, then and there duly excepted.

Defendant, by its counsel, offered in evidence that certain exhibit heretofore marked for identification Defendant's Exhibit No. 4, which is hereinafter fully set forth, to which offer plaintiff, by its counsel, objected on the ground that the same was incompetent, which objection was sustained by the Court, and to which ruling of the Court defendant then and there duly excepted on the record.

Defendant thereupon offered in evidence a certain document heretofore marked for identification Defendant's Exhibit 7, and in connection therewith another document heretofore marked for identification Defendant's Exhibit 6, which documents [52] were admitted in evidence and are hereinafter fully set forth.

Defendant offered in evidence a certain document heretofore marked for identification Defendant's Exhibit No. 5, which is hereinafter fully set forth, which offer was objected to as incompetent by plaintiff and which objection was sustained by the Court and to which ruling of the Court the defendant then and there by its counsel duly excepted.

WHEREUPON, both parties rested, and the foregoing, including the exhibits as set forth herein, constitutes all the testimony and evidence in the case.

Thereupon, and before the Court charged the jury and before argument, plaintiff moved the Court that it direct the jury to return a verdict in its favor upon

the first and second causes of action set forth in the complaint, and that the Court direct the jury to return a verdict in its favor upon the third, fourth, fifth, and sixth causes of action set forth in the complaint.

Thereupon, and before argument and before the Court charged the jury, defendant, by its counsel moved the Court to direct the jury to return a verdict in its favor upon the first, second, third, fourth, fifth and sixth causes of action as set forth in the complaint, and that in case said motion be denied that it have leave to go to the jury.

Thereupon, after argument by the respective counsel in the absence of the jury the Court granted plaintiff's said motion for a directed verdict in favor of plaintiff upon the first, second, third, fourth, fifth and sixth causes of action, and denied defendant's motion for a directed verdict in favor of defendant on the said first, second, third, fourth, fifth and sixth causes of action and for leave to [53] go to the jury.

Defendant then and there and before the Court charged the jury duly excepted to the ruling of the Court in granting plaintiff's said motion for a directed verdict in favor of plaintiff, and duly excepted to the ruling of the Court in denying defendant's said motion for a directed verdict in its favor and for leave to go to the jury in case said motion be denied.

Thereupon the Court charged the jury as follows:

[Instructions.]

“In this action the United States seeks to recover from the defendant penalties for certain violations of said act, part of which has just been read to you. The Government’s complaint is in six counts. The first two relate to the engineer and fireman of defendant’s freight train Extra West 2813, running between Lordsburg, New Mexico, and Benson, Arizona. Counts three to six, inclusive, relate to the conductor and brakemen of the same train, being seventeen hours and fifty-nine minutes, and the continuous service required of the conductor was nineteen hours and ten minutes.

“The defendant has alleged in its answer that in neither case were the employees in question on duty more than sixteen consecutive hours, but that in each case were definitely released from duty in connection with said train at Bowie for a period of two hours and twenty-five minutes, to wit, from 9:15 A. M. December 21st, 1912, to 11:40 A. M. of the same day, and were again definitely released from service in connection with said train at the same place for one hour, from 1:20 P. M. until 2:20 P. M. of the same day. Defendant contends that these releases operated to break the continuity of the employees’ service and therefore that the employees were not on duty more than sixteen consecutive hours. The [54] Government has filed a request that the Court instruct the jury to find for the plaintiff on the first, second, third, fourth, fifth and sixth

causes of action. All other causes were disposed of by the Court.

The defendant has also filed a motion for a directed verdict and asked the Court to direct a verdict in its favor on said first, second, third, fourth, fifth and sixth causes of action in plaintiff's complaint herein.

Under the law as I understand it and on the undisputed testimony in this case, including the telegram sent by the trainmaster, Mr. Wilson, to the agent at Bowie, I deem it my duty to grant the request made by the Government and direct you to find for the plaintiff on the first, second, third, fourth, fifth and sixth causes of action of plaintiff's complaint. I deny the motion and request made by the defendant and therefore you will, without retiring, sign and record your verdict."

To which said portion of said charge as follows: "Under the law as I understand it and on the undisputed testimony in this case, including the telegram sent by the trainmaster, Mr. Wilson, to the agent at Bowie, I deem it my duty to grant the request made by the Government and direct you to find for the plaintiff on the first, second, third, fourth, fifth and sixth causes of action of plaintiff's complaint. I deny the motion and request made by the defendant and therefore, you will, without retiring, sign and record your verdict," the defendant, by its counsel, then and there duly excepted. [55]

**[Plaintiff's Exhibit "A"—Telegram, December
21, 1912.]**

Form 2191.

Telegram

Sent to	Time Sent	Sender	Receiver
Bo	9 AM	G	RM
Tucson DEC 21st 12/			

WHL and Round house foreman Bowie

as you have to use the local eng there will be no eng for local crews to work with release the local crews and call for when can give them an eng advise time released and recalled see it is as much as an hour so we can get credit for it.

WW 9am

Plf. Exhibit "A." [56]

**[Plaintiff's Exhibit "B"—Telegram, December
21, 1912.]**

Form 2191.

Telegram

Received From	Time Received	Receiver
Bo	150 PM	G
Bowie, 12/21/1912		

W W

Ext. 2813 West was released at Bowie at 915 AM
Called to go to work at 1140 AM Released at 120
PM to go work at 220 PM.

Sullivan Condr 2813 W

Plf. Exhibit "B." [57]

[Plaintiff's Exhibit "C"—Conductor's Trip Report.]

Plf. Ex. "C."

Form 2631.

C. S.

Report No. 6.

CONDUCTOR'S TRIP REPORT.

Southern District, Tucson Division

Engines.	Engineers.	Class of Service.
2813	Eaker	Local
Train No.	From.	To.
+	B 1148	B-1033
		Miles Run.
		115
		Total Card Mileage————

Called to leave at 6 00 A. M. 12-21 1912.

Left at 6 00 A. M. 12-21 1912.

Arrived at 12 25 A. M. 12-22 1912.

Released at 12 40 A. M. 12-22 1912.

Time on Road 15 Hours—Mins.

Total Time in Service 18 Hours 55 Mins.

Schedule Time 10 Hours Mins.

Terminal Delay Hours Mins.

Doubling Hills Hours Mins.

Claim 15 Mins. Switching in Benson Yard.

Time Claimed.

	Names.	Miles or Days. Trips.	Over Hours.
Conductor	B. T. Sullivan	1	8
Brakeman	W. E. Brown	1	8
"	H. F. Peacock	1	8
"	C. G. Harrison	1	8
Baggageman or Porter			

Time slip Condr. Sullivan 2813.

[Reverse side:]

SUMMARY OF DELAYS.

	Hrs.	Mins.
Local Work and Switching.....		
Handling Company Material.....		
Meeting Trains		
Wait Connections		
Fuel and Water.....		
Derailments and Wrecks.....		
Engine Failures		
Yards Blocked		
Trains Not Ready.....		
Engines Not Ready.....		
Trains Parting		
Hot Box and Repairs.....		
Air Failures		
Bridges		
Car Inspections		
Block Signals		

[Written across face of above:] P. G. 6/12/13 S. C. C.

REMARKS.

Released at Bowie at 9 15 A. M. called to go to work at 11 40
 A. M. released at 1 20 P. to 2 20 P. M. off duty 3 hrs. 25 mins.
 at Bowie waiting for engine. [58]

[Plaintiff's Exhibit "D"—Train Delay Report.]

Form 2370

TRAIN DELAY REPORT

COMPANY

Tucson Division Superintendent.

Ex West { Engine No. _____
Train No. — { Engine No. _____ Direction — From — To —

Ordered for
6:00 A. M.

Made up at
_____ M.

Engines on at
_____ M.

Air Ready at
_____ M.

Train Departed at
6:00 A. M.

Arrived Destination at
_____ M.

Name of Employee.	Occu- pation.	Reported for Duty.	Went off Duty.	Total Time on Duty.	Time off Duty Prior to this Trip.
		Date.	Time.	Date.	Time.
				Hours.	Min- utes.

DETAIL OF DELAYS

Delayed at or Between.	Hours.	Minutes.	Cause of Delay.
Steins		5	Way Frt. & Air
Vanar		10	Inspection & No. 4.
		20	10 5 15
Simon		50	Way Frt. Switching Water Ex. 2742
			5 hrs. 15 mins.
Bowie	9	15	Engine taken away to help trains
			another engine at 2:30
			At 9:15 A. M. No. 9-10 No. 10-10 Water 5
			2 hrs. 5 40
			Switching Weighing Blocked by No. 32
			2759 West and 20 mins.
			Blocked by Ex. 30 mins. A. E. Pass
			5 15 40 15
Willcox	1	15	Water Switching Way Frt. Filling Water Cars
Hado		5	Setg. out car
			10 25 No. 8 10
Cochise		45	Ex. 2779 East Pickg. up and setg. out cars
			15 10
Dragoon		25	Way Frt. Setg. out cars
Sibyl		5	Inspection
			Released at Bowie 3 hrs. 25 mins.
			Arrived at Benson 12-22-12 12:25 P. M.
Total	12	55	

Cause of delay must be fully stated.

(See instructions on back.)

B. T. Sullivan, Conductor.

Eaker, Engineer, Engine No. 2813.

Sullivan 2813 Delay Report.

Engineer, Engine No. _____

[Plaintiff's Exhibit "E"—Engineer's Trip Report.]

Plf. Ex. "E."

#

Form 2301.

ENGINEER'S TRIP REPORT No. 18.

Engine.

Train.

2749

XE2742

No. 813 Initial S. P. No. X2813 Class Frt. and Helper
From Lordsburg to Simon, Simon to Steins, Steins to Benson.

Called for 6 A. M. 1912

Left at 6 A. M. 12/21 1912.

10 29 25

Arrived at 12 40 A. M. 12/22 1912.

Relieved at 12 40 A. M. 1912.

16 29

Time on Road 18 Hrs. 40 Mins.

This space is for the
Timekeeper's Notes.

97

Schedule Time 11 Hrs. 40 Mins.

114+31

Time Card Mileage 146

5

Road Mileage 146

Over Miles 92

Initial Delay — Hrs. — Min.

Terminal Delay — Hrs. — Min.

Total Claim.

Miles 233½ Days 1 Trips 2 Hrs. 18-40

Engineer Billy F. Eaker.

Fireman Frank H. Kempf.

Conductor Sullivan.

Watchman.....

NOTE.—Read Instructions on back of report.

Time slip Engr. Eaker 2813. [60]

REMARKS.

X W 2813 Lordsburg to Simon.

Help X E. 2742 Simon to Steins.

X W 2749 Steins to Bowie E X W 2813

Bowie Benson.

Released at Bowie 1 hr. Released at Cochise at 10 29 P. M. on acct. 16 hrs. while train was moving. Claim continuous time from 6 A. M. to 12 40 A. M. or 18 hrs. and 40 mins.

P. G. 6/12/13. S. C. C.

Defendant's Exhibit No. 3, for Identification
[Bulletin No. 1727].

Rejected and filed May 22, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

“BULLETIN NO. 1727.

“TO TRAIN AND ENGINE MEN:

February 11, 1910.

There is a lack of understanding as to the interpretation of the Federal Law relative to excessive service and under what conditions a train may proceed to its terminal when the service will exceed sixteen hours. The law provides that under certain conditions due to casualties or causes which could not have been foreseen at the time of leaving terminal, the law will not apply and it is possible for train to proceed to its terminal destination. Hereafter the following will apply: Be careful in giving delays, to state all causes particularly such as break in twos and any defects in engine which might have caused delay and if you receive a message over my signature that the law will not apply in your case, giving the reason therefor, and stating that you may pro-

ceed to terminal, be governed accordingly; otherwise you will see that you do not perform any service in excess of sixteen hours, this sixteen hours to include the thirty minutes prior to time called to leave your initial terminal. You will, however, use every effort to protect the company's interest by asking for instructions and giving full information as to delays which might constitute the reason for the law becoming inoperative, in ample time to permit the receipt of instructions referred to. Conductors in wiring delays which involve any defects of engine must have message signed jointly by the engineer to avoid any misunderstanding which might result in violation of the law.

W. H. WHALEN,
Superintendent." [61]

Defendant's Exhibit No. 4, for Identification
[Bulletin No. —].

Rejected and filed.

BULLETIN NO.

August 16, 1912.

TO TRAIN AND ENGINE MEN:

There is a lack of understanding as to the Federal Law relative to excessive service and under what conditions a train may proceed to its terminal when the service will exceed sixteen hour. The law provides that under certain conditions due to casualties or causes which could not have been foreseen at the time of leaving terminal, the law will not apply and it is permissible for train to proceed to its terminal destination. Hereafter the following will apply: Be careful in giving delays to state all causes, par-

ticularly such as break in twos and any defects in engine which might have caused delay and if you receive a message over my signature that the law will not apply in your case, giving the reason therefor, and stating that you may proceed to terminal, be governed accordingly; otherwise you will see that you do not perform any service in excess of sixteen hours, this sixteen hours to include the thirty minutes prior to time called to leave your initial terminal. You will, however, use every effort to protect the company's interest by asking for instructions and giving full information as to delays which might constitute the reason for the law being inoperative, in ample time to permit the receipt of instructions referred to. Conductors in wiring delays which involve any defects of engine must have message signed jointly by the engineer to avoid any misunderstanding which might result in violation of the law.

J. H. DYER,
Superintendent. [62]

Defendant's Exhibit No. 5, for Identification [Letter, May 17, 1910, G. L. Hickey to P. Slater et al.].

Rejected and filed May 22d, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

“Tucson, Ariz., May 17th, 1910.

Mr. P. Slater,
Trainmaster—YUMA.

Mr. C. M. Murphy,
Trainmaster—LORDSBURG.

Mr. B. F. Scarborough,
Chf. Dispr.—TUCSON.

Mr. M. J. Kingsbury,
Term, T. M.—GILA.

Gentlemen:

We are in receipt of rulings from the General Manager that in view of the frequent violations of the 16-hour law that hereafter employees responsible for authorizing such violations will be discharged from the service.

Mr. Scarborough is in possession of all the rulings bearing on this subject, and the matter will be taken up with a view of having rulings up to date prepared and furnished us for distribution. In the meantime I would request that Trainmasters and Terminal Trainmaster take no chances whatever by authorizing service in excess of 16 hours. Mr. Kingsbury will be very particular to not permit any trainmen to do switching in Gila yard which in any possibility would call for violation of the hours of service law.

Yours truly,

(Sgnd.) G. L. HICKEY,

Asst. Supt.

GLH-J. [63]

[Defendant's Exhibit No. 6—Telegram, December 21, 1912.]

Form 2191.

Telegram

Recd From	Time Received
OX	825 PM

Willcox 12—21—1912.

W W

Train crew 16 hrs is up at 12 55 AM eng crew 16

hrs up at 10 30 PM eng crew was released 1 hour at Bowie.

SULLIVAN.

Defendant's Exhibit No. 6. [64]

[Defendant's Exhibit No. 7—Telegram, December 21, 1912.]

Tucson Dec 21st 1912.

Sullivan Willeox

Your wire When do you figure the train crews time up and When the engine crews time up?

Does the release mentioned in message from Bowie apply also to eng crew or only train crew?

There is an eng crew on ex 2778 east Clark See that you get it.

Cut out enough work so that you can reach Benson at the time your time is up which I figure is 12.55 A.M. according to your message Answer

W W

Defendant's Exhibit No. 7 [65]

AND THEREAFTER, counsel for the respective parties made and entered into the following stipulation:

In the United States District Court for the District of Arizona.

No. 5—TUCSON.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

**Stipulation [Extending Time to Serve, etc.,
Proposed Bill of Exceptions].**

It is hereby stipulated by and between the parties hereto, by their respective counsel, that the defendant herein be allowed thirty days' additional time from date hereof in which to serve and file its proposed bill of exceptions relating to the judgment entered herein on counts one to six, inclusive, of plaintiff's complaint.

Dated June 25th, 1914.

(Sgd.) THOMAS A. FLYNN,
SAMUEL L. PATTEE,
Attorneys for Plaintiff.

FRANK COX,
FRANCIS M. HARTMAN,
Attorneys for Defendant. [66]

**[Petition for Settlement and Allowance of Bill of
Exceptions.]**

*In the United States District Court for the District
of Arizona.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

And now in furtherance of justice and that right may be done, the defendant presents the foregoing as its bill of exceptions in this case, as to counts one, two, three, four, five and six, as set forth in plaintiff's complaint herein, and prays that the same may

be settled and allowed and signed and certified by the Judge as provided by law.

Dated this 17th day of July, 1914.

FRANCIS M. HARTMAN,
Attorney for Defendant. [67]

*In the United States District Court for the District
of Arizona.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Notice of Filing Bill of Exceptions.

To the Above-named Plaintiff, and to Messrs.
Thomas A. Flynn and Samuel L. Pattee, Its
Attorneys:

You and each of you will hereby please take notice that the defendant in the above-entitled cause, desiring and intending to prosecute a writ of error from the judgment of the above-entitled court in the above-entitled cause, entered on the 22d day of May, 1914, on the first, second, third, fourth, fifth and sixth causes of action, as set forth in the complaint herein, has prepared and this day filed in the office of the Clerk of the above-entitled court, for presentation to the Honorable Wm. H. Sawtelle, the Judge who tried the above-entitled cause, defendant's bill

of exceptions, copy of which is this day served upon you.

Dated July 18th, 1914.

FRANCIS M. HARTMAN,
Attorney for Defendant. [68]

*In the United States District Court for the District
of Arizona.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Order Settling Bill of Exceptions.

The foregoing bill of exceptions is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein.

Dated this 23d day of July, A. D. 1914.

WM. H. SAWTELLE,
Judge.

[Endorsements]: No. 5 (Tucson). In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Bill of Exceptions. Filed Jul. 18, A. D. 1914. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [69]

[Petition for Writ of Error.]

*In the United States District Court, for the District
of Arizona.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

DEFENDANT'S PETITION FOR WRIT OF
ERROR AS TO COUNTS ONE, TWO,
THREE, FOUR, FIVE AND SIX AS SET
FORTH IN PLAINTIFF'S COMPLAINT.

To the Honorable WM. H. SAWTELLE, Judge of
the District Court Aforesaid:

Now comes Southern Pacific Company, a corpora-
tion, by its attorney, and respectfully represents:

That this action is brought to recover certain pen-
alties arising under the Act of Congress known as
the "Hours of Service Act," and that the petition or
complaint herein contains twelve counts or causes of
action.

That on the twenty-second day of May, A. D. 1914,
the Court directed a verdict against your petitioner
and in favor of the plaintiff, the United States of
America, as to the first, second, third, fourth, fifth
and sixth counts or causes of action, as set forth in
plaintiff's complaint herein, and upon said verdict
final judgment was entered on the said twenty-second

day of May, 1914, against your petitioner, Southern Pacific Company, defendant herein.

Your petitioner, feeling it is aggrieved by said verdict and judgment entered herein as aforesaid, herewith petitions and asks for an *other* allowing it a writ of error to the Circuit Court of Appeals for the Ninth Circuit under the laws of the United States in such cases made and provided. [70]

WHEREFORE, said defendant prays for the allowance of a writ of error and for an order fixing the amount of bond for a supersedeas in said cause, and the signing of a citation, and for such other orders and process as may cause the same to be corrected by the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 20th day of July, 1914.

(Signed) FRANCIS M. HARTMAN,
Attorney for Defendant.

Allowed:

Judge.

[Endorsements]: In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Petition for Writ of Error as to Counts 1, 2, 3, 4, 5 and 6. Filed July 21, A. D. 1914. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [71]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Assignment of Errors.

Now comes Southern Pacific Company, a corpora-
tion, by its attorneys and says that in the record and
proceedings herein in the United States District
Court for the District of Arizona there is manifest
error to the great prejudice of the Southern Pacific
Company, in this, to wit:

1. That said Court erred in sustaining the objec-
tion of counsel for defendant in error, as calling for
a conclusion of the witness, to the following ques-
tions propounded to the witness William Wilson, by
counsel for plaintiff in error: "Q. How long were
these men (referring to the employees of plaintiff in
error mentioned in plaintiff's complaint herein) on
duty?"

For the reason that said witness had already tes-
tified that as chief dispatcher he was in direct charge
of said employees at the time and place referred to
and knew when they went on duty and when they
were relieved.

2. That the said Court erred in sustaining the
objection of counsel for defendant in error, as calling

for a conclusion of law, to the following question propounded to the witness William Wilson, on cross-examination, by counsel for plaintiff in error, to wit:

“Q. And how long were they (meaning the employees of the plaintiff in error referred to in the complaint of the [72] defendant in error herein) on duty, counting out the two hours and twenty-five minutes and the one hour's time they were relieved at Bowie?”

For the reason that the said witness had theretofore testified that he was at the time mentioned in the complaint of the defendant in error herein Chief Dispatcher of the Southern Pacific Company, at Tucson, Arizona, directly in charge of the employees of said company mentioned and referred to in the complaint of the defendant in error herein, and that the said employees, to wit, B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, referred to therein, and each of them, were relieved and released on the date referred to in the complaint of the defendant in error, herein, for the definite period of two hours and twenty-five minutes, at the station of Bowie, to wit, from 9:15 o'clock A. M. to 11:40 o'clock A. M.; and were again relieved and released at said station of Bowie for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; and that the said employees, to wit, Billy F. Eaker and Frank H. Kempf, were relieved and released at the said station of Bowie for a definite period of one hour, to wit, from 1:30 o'clock P. M. to 2:30 o'clock P. M.; and that the question as to how long said

employees were on duty, eliminating the two periods of two hours and twenty-five minutes and one hour was a question of fact material to the issues herein, which should have been submitted to the jury.

3. That the said Court erred in sustaining the objection of counsel for defendant in error, as incompetent, irrelevant and immaterial and not tending to prove any issue in the case, to the following question propounded to the witness William Wilson, on cross-examination, by counsel for the plaintiff in error: "Q. What did you, as chief dispatcher [73] for this company on this division, and the other officers of the company, do, as far as you know of your own knowledge, in this particular case mentioned in this complaint as to complying with this law?" (meaning the hours of service act).

For the reason that said question was competent, relevant and material to the issues involved in this case, because the evidence sought to be elicited by said question would tend to prove that plaintiff in error was acting in good faith and endeavoring to prevent any of its employees and particularly the employees mentioned and referred to in the complaint of defendant in error herein, from violating the provisions of the law known as the "Hours of Service Act"; and that the evidence sought to be elicited by the said question would prove or tend to prove that the employees mentioned in the complaint of defendant in error herein were released and relieved by the said witness, as Chief Dispatcher of the Southern Pacific Company, in order that the said employees should not be on duty for a longer period

than sixteen consecutive hours on the date referred to.

4. That the said Court erred in sustaining the objection of counsel for defendant in error to the following question propounded to the witness William Wilson, by counsel for plaintiff in error: "Q. Is two hours and twenty-five minutes sufficient time for rest and recreation?" For the reason that said witness had already testified that certain employees of the plaintiff in error as mentioned and referred to in the complaint of defendant in error herein were relieved and released at the station of Bowie, on the date referred to in the complaint, for the definite period of two hours and twenty-five minutes, and that the said [74] witness, as an experienced railroad man, was competent to testify as to whether or not such a length of time was sufficient for rest and recreation for said employees; and that such question as to whether or not such length of time was sufficient for said employees for rest and recreation was a material question of fact which should have been submitted to the jury.

5. That the said Court erred in sustaining the objection of the counsel for defendant in error to the following question propounded to witness William Wilson, on cross-examination, by counsel for plaintiff in error, and also in striking out the answer of the witness to said question, to wit: "Q. Was the one hour that the train crew was released from 1:20 to 2:20 P. M., sufficient at that time and place for these men, for rest and recreation? A. Yes." For the reason that the question as to whether or not one

hour was sufficient time for rest and recreation for the said train and engine crews was a material question of fact in the case and should have been submitted to the jury for determination.

6. That the said Court erred in sustaining the objection of counsel for defendant in error to the following question, propounded to the witness William Wilson, on cross-examination, by counsel for plaintiff in error, to wit: "Q. Mr. Wilson, was Billy F. Eaker on duty for a longer period than sixteen consecutive hours on December 21st, 1912, as alleged in the complaint, from 5:30 o'clock A. M. to 10:29 o'clock P. M., of that day?"

For the reason that the said witness had already testified that he was in direct charge of said employee and that said employee had been released for a definite period of one hour, to wit, [75] from 1:30 o'clock P. M. to 2:30 o'clock P. M., on said day. That the question as to whether or not the said Eaker was on duty for a longer period than sixteen consecutive hours on said date was a question of fact which should have been submitted to the jury.

7. That the Court erred in sustaining the objection of counsel for defendant in error that the same called for a conclusion of law, to the following question, propounded to the witness William Wilson, on cross-examination, by counsel for plaintiff in error, to wit: "By Mr. Hartman (Counsel for Defendant). We desire to ask the same question of the witness for the record as to each of the six counts." (Meaning were either Frank H. Kempf, B. T. Sullivan, W. E. Brown, H. F. Peacock or C. G. Harrison on duty for

a longer period than sixteen consecutive hours on December 21st, 1912, as alleged in the complaint.)

For the reason that the question as to whether or not the said employees were on duty for a longer period than sixteen consecutive hours on said date was a question of fact which should have been submitted to the jury, and that said witness, if he had been allowed to answer said question, would have testified that neither of said employees were on duty for a longer period than sixteen consecutive hours on said date.

8. That the Court erred in granting the motion of counsel for defendant in error to strike from the record and that the same be excluded from the jury certain testimony of the witness B. T. Sullivan, a witness on behalf of defendant in error, and being one of the employees of plaintiff in error mentioned in said complaint, and who was charged by defendant in error of having been permitted to be or remain on duty for a longer period than sixteen consecutive [76] hours, as follows: "That he was released at Bowie at 1:20 P. M. to go to work at 2:20 P. M., and that he was off duty for an hour," for the reason that the said question as to whether or not witness was off duty at Bowie for one hour, from 1:20 P. M. to 2:20 P. M., was a question of fact to be submitted to the jury and about which the witness was competent to testify, and the same should not have been stricken from the record nor excluded from the jury.

9. That the said Court erred in sustaining the objection of counsel for defendant in error, that the same was incompetent, to a certain question pro-

pounded to the witness B. F. Eaker, on cross-examination, by counsel for plaintiff in error, to wit: "Q. Were you or your fireman required or permitted to be or remain on duty for a longer period than sixteen consecutive hours, to wit, from 5:30 A. M. to 10:29 o'clock P. M., on the 21st day of December, 1912?"

For the reason that the said witness was competent and qualified to testify as to whether or not he or his fireman were required or permitted to be or remain on duty for a longer period than sixteen consecutive hours on said date; for the reason that said testimony was competent, relevant and material; for the reason that the question as to whether or not the said Eaker or the said Kempf were required or permitted to be or remain on duty for a longer period than sixteen consecutive hours on said date was a question of fact which should have been submitted to the jury; and for the reason that the plaintiff in error could have proved by said witness, if the witness had been permitted to answer said question, that neither said witness Eaker nor said Kempf, the engineer, and fireman, respectively, of said train, were required or permitted to be or remain on duty for a longer period than [77] sixteen consecutive hours on the date mentioned in the complaint of defendant in error herein.

10. That the said Court erred in rejecting certain evidence offered by plaintiff in error, being a certain document marked for identification "Defendant's Exhibit No. 3," which is in the following

words and figures, to wit:

“BULLETIN NO. 1727.

February 11, 1910.

TO TRAIN AND ENGINE MEN:

There is a lack of understanding as to the interpretation of the Federal Law relative to excessive service and under what conditions a train may proceed to its terminal when the service will exceed sixteen hours. The law provides that under certain conditions due to casualties or causes which could not have been foreseen at the time of leaving terminal, the law will not apply and it is possible for train to proceed to its terminal destination. Hereafter the following will apply: Be careful in giving delays, to state all causes, particularly such as break-in-two's and any defects in engine which might have caused delay and if you receive a message over my signature that the law will not apply in your case, giving the reason therefor, and stating that you may proceed to terminal, be governed accordingly; otherwise you will see that you do not perform any service in excess of sixteen hours, this sixteen hours to include the thirty minutes prior to time called to leave your initial terminal. You will, however, use every effort to protect the company's interest by asking for instructions and giving full information as to the delays which might constitute the reason for the law becoming inoperative, in ample time to permit the receipt of instructions referred to. Conductors in wiring delays which involve any defects of engine must have message signed jointly by the engineer to [78] avoid any misunderstanding which might re-

sult in violation of the law.

W. H. WHALEN, Superintendent."

For the reason that the same was competent, relevant and material to the issues involved in the case: For the reason that the same tended to show that plaintiff in error was acting in good faith in its efforts to abide by the law known as the Hours of Service Act, and was taking every precaution to avoid violating said law by issuing strict instructions to each and all of its employees, including the employees named in the complaint of defendant in error herein, that said law should not be violated and that no service should be performed in excess of sixteen consecutive hours.

11. That the said Court erred in rejecting in evidence the offer made by counsel for plaintiff in error of a certain document marked "Defendant's Exhibit 4 for Identification," which is in the following words and figures:

"BULLETIN No.

August 16, 1912.

TO TRAIN AND ENGINE MEN:

There is a lack of understanding as to the Federal Law relative to excessive service and under what conditions a train may proceed to its terminal when the service will exceed sixteen hours. The law provides that under certain conditions due to casualties or causes which could not have been foreseen at the time of leaving terminal, the law will not apply and it is permissible for train to proceed to its terminal destination. Hereafter the following will apply: Be careful in giving delays to state all causes, par-

ticularly such as break in twos and any defects in engine which might have caused delay and if you receive a message over my signature that the law will not apply in your case, giving the reason therefor, [79] and stating that you may proceed to terminal, be governed accordingly; otherwise you will see that you do not perform any service in excess of sixteen hours, this sixteen hours to include the thirty minutes prior to time called to leave your initial terminal. You will, however, use every effort to protect the company's interest by asking for instructions and giving full information as to delays which might constitute the reason for the law being inoperative, in ample time to permit the receipt of instructions referred to. Conductors in wiring delays which involve any defects of engine must have message signed jointly by the engineer to avoid any misunderstanding which might result in violation of the law.

J. H. DYER, Superintendent."

For the reason that the same was competent, relevant and material to the issues involved in the case: For the reason that the same tended to show that plaintiff in error was acting in good faith in its efforts to abide by the law known as the Hours of Service Act, and was taking every precaution to avoid violating said law by issuing strict instructions to each and all of its employees, including the employees named in the complaint of defendant in error herein that said law should not be violated and that no service should be performed in excess of sixteen consecutive hours.

12. That the Court erred in rejecting in evidence the offer made by counsel for plaintiff in error of a certain document marked for identification "Defendant's Exhibit No. 5," which is in the following words and figures, to wit:

"Tucson, Arizona, May 17th, 1910.

Mr. P. Slater,

Trainmaster—YUMA.

Mr. C. M. Murphy,

Trainmaster—LORDSBURG. [80]

Mr. B. F. Scarborough,

Chf. Dispr. —TUCSON.

Mr. M. J. Kingsbury,

Term. T. M.—GILA.

Gentlemen:

We are in receipt of rulings from the General Manager that in view of the frequent violations of the 16-hour law that hereafter employees responsible for authorizing such violations will be discharged from the service.

Mr. Scarborough is in possession of all the rulings bearing on this subject, and the matter will be taken up with a view of having rulings up to date prepared and furnished us for distribution. In the meantime I would request that Trainmasters and Terminal Trainmaster take no chances whatever by authorizing service in excess of 16 hours. Mr. Kingsbury will be very particular not to permit any trainmen to do switching in Gila yard which in any possibility would call for violation of the Hours of Service law.

Yours truly,

(Sgnd.) G. L. HICKEY, Asst. Supt."

For the reason that the same was competent, relevant and material to the issues involved in the case; for the reason that the same tended to show that plaintiff in error was acting in good faith in its efforts to abide by the law known as the Hours of Service Act, and was taking every precaution to avoid violating said law by issuing strict instructions to each and all of its employees, including the employees named in the complaint of defendant in error herein, that the said law should not be violated and that no service should be performed in excess of sixteen consecutive hours.

13. That said Court erred in granting the motion of defendant in error at the close of the testimony that the Court direct the jury to return a verdict in favor of defendant [81] in error on the first, second, third, fourth, fifth and sixth causes of action, as set forth in the complaint, for the reason that the undisputed testimony in the case showed that neither of the employees of plaintiff in error named in the complaint of defendant in error were required or permitted to remain on duty for a longer period than sixteen consecutive hours, as alleged in said complaint; for the reason that the undisputed testimony in the case showed that neither of said employees were on duty for a longer period than sixteen consecutive hours as charged in said complaint; for the reason that the undisputed testimony showed that the train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, being the employees named in the complaint of defendant in error, were released and relieved at Bowie, Ari-

zona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M., and that they were not on duty for said period of two hours and twenty-five minutes, and that they were not performing any service whatever for the plaintiff in error during said period: That during said period they were not waiting around subject to be called to go to work but were entirely free to go and come as they chose; ~~that said period of two hours and twenty-five minutes, and that they were not performing any service whatever for plaintiff in error during said period: That during said period they were not waiting around subject to be called to go to work but were entirely free to go and come as they chose:~~ that said period of two hours and twenty-five minutes was sufficient for rest and recreation for said employees at said time, and that said employees did obtain rest and recreation during said period of said release; that said employees were relieved [82] and released again at said station of Bowie on said date, for the definite period of one hour, to wit, from 1:20 o'clock P. M. to 2:20 o'clock P. M.; that during said period of one hour said employees were not performing any service for plaintiff in error; that during said time said employees were not waiting around expecting to be called to go to work; that during said period said employees were free to come and go as they chose; that said period of one hour was sufficient for rest and recreation of said employees at said place, and that said employees did obtain rest and recreation during said period of release of one hour. For the reason that the undis-

puted testimony in said case showed that the said train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, were relieved and released on said run at the station of Bowie, Arizona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M., and were again released at Bowie for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; and that after deducting said two hours and twenty-five minutes and said one hour periods from the time of said employees' commencing work, to wit, 5:30 A. M., until they arrived at the end of the run, to wit, 12:40 A. M. of the next day, they were not on duty for a longer period than sixteen consecutive hours. For the reason that the undisputed testimony in this case shows that the said B. F. Eaker and Frank H. Kempf were relieved and released at Bowie, Arizona, on said run, for a definite period of one hour, to wit, from 1:30 P. M. to 2:30 P. M.; that during said period the said employees were not performing any duty for plaintiff in error; that said period was sufficient for rest and recreations of said employees. That said employees did obtain rest and [83] recreation during said period and that deducting said period of release said employees were not on duty for a longer period than sixteen consecutive hours. For the reason that the question as to whether or not the employees of the plaintiff in error as mentioned in said complaint of defendant in error herein were allowed or permitted to be or remain on duty for a longer time than sixteen consecutive hours was a question of fact which

should have been submitted to the jury.

14. That the said Court erred in denying the motion made by the counsel for plaintiff in error at the close of the testimony that the Court direct the jury to return a verdict in favor of plaintiff in error upon the first, second, third, fourth, fifth and sixth causes of action as set forth in the complaint of defendant in error herein, and that in case said motion be denied it have leave to go to the jury; for the reason that the undisputed testimony in the case showed that neither of the employees of plaintiff in error named in the complaint of defendant in error were required or permitted to be or remain on duty for a longer period than sixteen consecutive hours, as alleged in said complaint; for the reason that the undisputed testimony in the case showed that neither of said employees were on duty for a longer period than sixteen consecutive hours as charged in said complaint; for the reason that the undisputed testimony showed that the train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, being the employees named in the complaint of defendant in error, were released and relieved at Bowie, Arizona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M.; that they were not on duty for said period of two hours and twenty-five minutes, and that they were not performing any service [84] whatever for plaintiff in error during said period; that during said period they were not waiting around subject to be called to go to work but were entirely free to come and go as they chose;

that said period of two hours and twenty-five minutes was sufficient for rest and recreation for said employees at said time, and that said employees did obtain rest and recreation during said period of said release; that said employees were relieved and released again at said station of Bowie on said date, for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; that during said period of one hour said employees were not performing any service for plaintiff in error; that during said time said employees were not waiting around expecting to be called to go to work; that during said period said employees were free to come and go as they chose; that said period of one hour was sufficient for rest and recreation of said employees at said time and place, and that said employees did obtain rest and recreation during said period of release of one hour. For the reason that the undisputed testimony in said cases shows that the said train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, were relieved and released on said run at the station of Bowie, Arizona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M., and were again released at Bowie for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; and that after deducting said two hours and twenty-five minutes and said one hour period of time from the total time of said employees from the time of commencing work, to wit, 5:30 A. M., until they arrived at the end of said run, to wit, 12:40 A. M. of the next day, they were not on duty for a longer period than sixteen

consecutive hours. For the reason [85] that the undisputed testimony in the case shows that said B. F. Eaker and Frank H. Kempf were relieved and released at Bowie, Arizona, on said run, for a definite period of one hour, to wit, from 1:30 P. M. to 2:30 P. M. That during said period the said employees were not performing any duty for plaintiff in error; that said period was sufficient for rest and recreation of said employees; that said employees did obtain rest and recreation during said period, and that deducting said period of said release said employees were not on duty for a longer period than sixteen consecutive hours. For the reason that the question as to whether or not the employees of the plaintiff in error, as mentioned in said complaint of defendant in error, were allowed or permitted to be on duty for a longer time than sixteen consecutive hours was a question of fact which should have been submitted to the jury.

15. That the Court erred in giving the following instruction to the jury: "Under the law as I understand it and on the undisputed testimony in this case, including the telegram sent by the train master Mr. Wilson to the Agent at Bowie, I deem it my duty to give the request made by the Government, and direct you to find for the plaintiff on the first, second, third, fourth, fifth and sixth causes of action of plaintiff's complaint, and I deny the motion and request of defendant, and therefore you will, without retiring, sign and record your verdict."

For the reason that the undisputed testimony in the case showed that neither of the employees of

plaintiff in error named in the complaint of defendant in error were required or permitted to remain on duty for a longer period than sixteen consecutive hours, as alleged in said complaint. For [86] the reason that the undisputed testimony in the case showed that neither of said employees were on duty for a longer period than sixteen consecutive hours as charged in said complaint. For the reason that the undisputed testimony showed that the train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, being the employees named in the complaint of the defendant in error, were released and relieved at Bowie, Arizona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M.; that they were not on duty for said period of two hours and twenty-five minutes, and that they were not performing any service whatever for the plaintiff in error during said period; that during said period they were not waiting around subject to be called to go to work but were entirely free to come and go as they chose; that said period of two hours and twenty-five minutes was sufficient for rest and recreation for said employees at said time, and that said employees did obtain rest and recreation during said period of said release; that said employees were relieved and released again at said station of Bowie on said date, for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; that during said period of one hour said employees were not performing any service whatever for plaintiff in error; that during said time said employees were not waiting

around expecting to be called to go to work; that during said period said employees were free to come and go as they chose; that said period of one hour was sufficient for rest and recreation of said employees at said time and place, and that said employees did obtain rest and recreation during said period of release of one hour. For the reason that the undisputed testimony in the case shows that the said train crew, composed of B. T. Sullivan, W. E. Brown, H. F. Peacock and C. G. Harrison, were relieved and released [87] on said run at the station of Bowie, Arizona, for the definite period of two hours and twenty-five minutes, to wit, from 9:15 A. M. to 11:40 A. M., and were again released at Bowie for the definite period of one hour, to wit, from 1:20 P. M. to 2:20 P. M.; and that after deducting said two hours and twenty-five minutes and said one hour's period of time from the total time of said employees from the time of commencing work, to wit, 5:30 A. M., until they arrived at the end of the run, to wit, 12:40 A. M., of the next day, they were not on duty for a longer period than sixteen consecutive hours. For the reason that the undisputed testimony in the case shows that said B. F. Eaker and Frank H. Kempf were relieved and released at Bowie, Arizona, on said run, for a definite period of one hour, to wit, from 1:30 P. M. to 2:30 P. M.; that during said period the said employees were not performing any duty for plaintiff in error; that said period was sufficient for rest and recreation of said employees; that said employees did obtain rest and recreation during said period and that deducting said period of said release, said employees

were not on duty for a longer period than sixteen consecutive hours. For the reason that the question as to whether or not the employees of the plaintiff in error, as mentioned in said complaint of defendant in error, were required or permitted to be or remain on duty for a longer time than sixteen consecutive hours was a question of fact which should have been submitted to the jury.

WHEREFORE, by reason of the errors aforesaid, the said Southern Pacific Company prays that the judgment rendered and entered in this action, so far as the same related to the first, second, third, fourth, fifth and sixth causes of action aforesaid, be avoided, annulled and reversed and [88] that the said District Court of the United States for the District of Arizona be directed to grant a new trial of said cause.

(Signed) FRANCIS M. HARTMAN,
Attorney for Plaintiff in Error, Defendant in the
Lower Court.

[Endorsements]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Assignment of Errors. Filed July 21, A. D. 1914. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [89]

*In the United States District Court for the District
of Arizona.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Supersedeas Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:

That we, Southern Pacific Company, a corporation, as principal, and L. H. Manning and Hugo J. Donan, of the county of Pima, State of Arizona, and District aforesaid, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ONE THOUSAND DOLLARS, to be paid to the said United States of America, its attorneys or assigns, for the payment of which well and truly to be made we bind ourselves, our successors, assigns, executors and administrators, jointly and severally, firmly by these presents.

Signed and dated this 18th day of July, A. D. 1914.

WHEREAS, lately, at a regular term of the District Court of the United States for the District of Arizona, sitting at Tucson, in said District, in a suit pending in said court between the United States of America, as plaintiff, and Southern Pacific Company, a corporation, as defendant, cause No. 5, at Tucson, on the law docket of said court, final judgment was rendered against the said Southern Pacific

Company, a corporation, for the sum of four hundred and two dollars, and the said Southern Pacific [90] Company, a corporation, has obtained a writ of error and filed a copy thereof in the Clerk's office of said court, to reverse the judgment of said court in the aforesaid suit, and a citation directed to the said United States of America, defendant in error, citing it to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, according to law, within thirty days from the date hereof.

Now the condition of the above obligation is such that if the said Southern Pacific Company, a corporation, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

And the said L. H. Manning and Hugo J. Donan, the sureties hereto, expressly agree that in case of breach of any condition hereof, the above-entitled court may upon notice to them of not less than ten days proceed summarily in this action to ascertain the amount which we, as such sureties, are bound to pay on account of such breach and to render judgment therefor against us and each of us and award execution therefor.

SOUTHERN PACIFIC COMPANY,

By FRANCIS M. HARTMAN,

Its Attorney.

(Sgnd.) L. H. MANNING.

(Sgnd.) HUGO J. DONAN. [91]

State of Arizona,
County of Pima,—ss.

L. H. Manning and Hugo J. Donan, the sureties on the within undertaking, being first duly sworn, each for himself and not one for the other, says: That he is a resident and householder within the county of Pima, State of Arizona, and within the district aforesaid; that he is worth the sum of one thousand dollars, the amount specified in the foregoing bond, over and above all just debts and liabilities and exclusive of property exempt from execution.

(Sgnd.) L. H. MANNING.

(Sgnd.) HUGO J. DONAN.

Subscribed and sworn to before me this 18th day of July, 1914.

[N. P. Seal] R. W. LANGWORTHY,
Notary Public, Pima Co., Arizona.

Approved this 21st day of July, A. D. 1914.

(Sgnd.) WM. H. SAWTELLE,
Judge. [92]

State of Arizona,
County of Pima,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that L. H. Manning and Hugo J. Donan, the parties to this bond whose genuine signatures are subscribed thereto, are in my opinion good and ample security for the amount therein specified, and that they have property in the said county of Pima, State of Arizona, subject to execution in excess of the amount of said bond, and that

if the bond was presented to me for approval the same would be accepted and approved.

WITNESS my hand this 21st day of July, A. D. 1914.

[Seal] (Sgnd.) GEORGE W. LEWIS,
Clerk.

By S. D. Gromer,
Deputy.

[Endorsements]: No. ——. In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Supersedeas Bond of Defendant on Writ of Error. Filed July 21, A. D. 1914. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [93]

**[Order Allowing Writ of Error and Fixing Amount
of Bond.]**

*In the United States District Court for the District
of Arizona.*

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Upon motion of Francis M. Hartman, Esq., attorney for defendant, and upon filing a petition for a writ of error and assignment of errors, it is ordered that a writ of error be and hereby is allowed to have

reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein and that the amount of the supersedeas bond on said writ of error be and it hereby is fixed at one thousand dollars, and upon the filing of such bond and the approval thereof by the Judge of this court that all further proceedings herein be suspended until the determination of said writ of error by said Circuit Court of Appeals.

Dated this 21st day of July, A. D. 1914.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In the United States District Court for the District of Arizona. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Order That Writ of Error Issue. Filed July 21, A. D. 1914. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk.
[94]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error [Original].

United States of America,—ss.

The President of the United States to the Honorable
Judge of the District Court of the United States
for the District of Arizona, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Southern Pacific Company, a corporation, plaintiff in error, and United States of America, defendant in error, a manifest error has happened to the damage of Southern Pacific Company, a corporation, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid, in this behalf do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco in the State of California, where said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then [95] and there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Hon. EDWARD D. WHITE,
Chief Justice of the United States, this the 21st day
of July, A. D. 1914.

[Seal]

GEORGE W. LEWIS,

Clerk of the United States District Court for the
District of Arizona.

By S. D. Gromer,
Deputy Clerk. [96]

[Endorsed]: No. —. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed July 21, A. D. 1914, at — M. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [97]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,

Plaintiff in Error.

VS.

UNITED STATES OF AMERICA.

Defendant in Error.

Citation [on Writ of Error (Original)].

United States of America,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, on the 19th day of August,

A. D. 1914, pursuant to writ of error filed in the office of the Clerk of the United States District Court for the District of Arizona, wherein the Southern Pacific Company, a corporation, is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Hon. EDWARD D. WHITE,
Chief Justice of the Supreme Court of the United States, this 21st day of July, A. D. 1914.

WM. H. SAWTELLE,
United States District Judge for the District of Arizona. [98]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corporation,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Service of the foregoing Citation in the above-entitled action is hereby admitted and accepted this 21st day of July, A. D. 1914.

THOMAS A. FLYNN,
M. C. LIST,
SAMUEL L. PATTEE,
Attorneys for United States of America, Defendant
in Error. [99]

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation. Filed July 22, A. D. 1914, at — M. George W. Lewis, Clerk. By S. D. Gromer, Deputy Clerk. [100]

In the United States District Court for the District of Arizona.

No. 5—(TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
tion,

Defendant.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the appeal heretofore perfected to said court upon the first, second, third, fourth, fifth and sixth causes of action herein, and include in the said transcript the following pleadings, proceedings, and papers on file, to wit:

- (1) The complaint.
- (2) The summons and return of service.
- (3) The answer of defendant.
- (4) The impaneling of the jury.

- (5) The verdict.
- (6) The judgment.
- (7) The bill of exceptions duly taken at the trial.
- (8) The petition for writ of error.
- (9) The assignment of errors.
- (10) The bond and approval.
- (11) Allowance of writ of error.
- (12) The original writ of error.
- (13) The original citation in error.
- (14) The clerk's certificate. [101]

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit and on file in the office of said Circuit Court of Appeals at San Francisco, California, before August 19th, 1914.

FRANCIS M. HARTMAN,
Attorney for Appellant. [102]

*In the United States District Court for the District
of Arizona.*

No. 5—(TUCSON).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Clerk's Certificate to Transcript.

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages, numbered 1 to 94, both numbers inclusive, present a true, full, and correct copy of the proceedings had and orders entered as therein stated, in cause No. 5 (Tucson), wherein the United States of America, was plaintiff and Southern Pacific Company, a corporation, was defendant, as the same appears of record and on file in this office, except that the original writ of error and citation in error are embraced therein at pages 95 and 100 respectively, all of which constitute the entire transcript of the proceedings in the cause as therein stated.

I further certify that the cost of the foregoing return to writ of error is forty-three and 80/100 (\$43.80) dollars, and that said amount was paid to me by Francis M. Hartman, Esq., attorney for plaintiff in error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of August, A. D. 1914.

[Seal] GEORGE W. LEWIS,
Clerk of the United States District Court for the
District of Arizona.

By S. D. Gromer,
Deputy Clerk. [103]

[Endorsed]: No. 2463. United States Circuit Court of Appeals for the Ninth Circuit. The Southern Pacific Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Received and filed August 13, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.